

CHILD WELFARE IN PROGRESS

Staff Development Sub-Project.

Information Guide To The Child Welfare Act

Unit V

Confinement of an Apprehended Child

Secure Treatment Certificate

Secure Treatment Order

Appeal Process



APR 11 1989

ACKNOWLEDGMENTS

This manual is the result of input and written contributions from a broad range of Departmental staff. The Child Welfare Implementation Project is appreciative of the efforts of these individuals. Through their support and involvement, both the quality and quantity of this manual was greatly enhanced.

ALBERTA SOCIAL SERVICES

The Child Welfare Implementation Project would also like to thank the following staff of Alberta Social Services who have contributed to the writing and technical development of the Orientation Manual:

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Information Guide To The Child Welfare Act

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Unit V

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Danny Roy - Regional Staff Development Coordinator, Northeast Region.

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- Jim Barnett - Writer, Human Resources of Canada.
- Boyce Hanley - Training Officer, Training Resources Corporate Staff Development.
- Alyson Lavers - Regional Representative, Central Region, Alberta Social Services
- Judy Maggs - Regional Representative, Northeast Region.
- Ann Moore - Regional Planner, South Region, Alberta Social Services.
- Danny Roy - Regional Staff Development Coordinator, Northeast Region.

ACTION ITEMS

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Writer, Human Resources of Gender.	-	Joe Jarnet
Training Officer, Training Resources Committee Staff Development.	-	Grace Hanley
Regional Representative, Central Region, Alberta Social Services	-	Alison Lavers
Regional Representative, Northeast Region.	-	Judy Rogers
Regional Planner, South Region, Alberta Social Services.	-	Ann Moore
Regional Staff Development Coordinator, Northeast Region.	-	Betty Roy

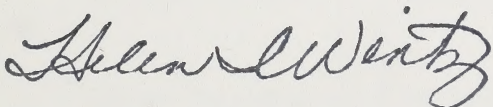
PREAMBLE

Child Welfare is a complex field in which you, as a child welfare worker, have many important responsibilities. When exercising these responsibilities, the uniqueness of each situation requires your own professional judgement and common sense, rather than reliance on a set of prescribed directives. The nature of your work, therefore, can be challenging, rewarding, and, at times, frustrating.

On July 1, 1985 the Alberta Legislative Assembly proclaimed the current Child Welfare Act. This Act represents an attempt to clarify the government's role with respect to child welfare issues. It also reflects the principles of effective casework practice. In order to help you to understand the legislation, we have developed seven informational guides and four videotapes on the Act. Further information can be found in the Act itself and other supportive documents listed at the end of each section of the module. It is important that you familiarize yourself with the pertinent sections of the Act. This will help clarify your role and provide guidelines for decision making.

I am hopeful that these documents will help you in your endeavor to assist the children and families with which you work.

Sincerely,



Helen Wentz
Senior Director
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HOW TO USE THIS MODULE

This module and others in the "Information Series" are meant to provide you with a quick overview of the Child Welfare Act. The modules can be used as an information source by themselves or used along with the 15-20 minute video-tapes that may be available to you.

The overall objective of these modules is to give you, the Child Welfare Worker, an information guide which answers some of the questions you may have when carrying out your role.

The format of each module is:

1. A schematic of the series;
2. An outline of the information contained in the particular module;
3. Critical information highlighted (enclosed in boxes) in each section;
4. Questions, case studies and checklists that you can use to test yourself on the content of each section of the module; and
5. A reference list at the end of each section of the module.

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THE INFORMATION GUIDE SERIES

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3	MATTERS TO BE CONSIDERED
4	MAJOR INNOVATIONS
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UNIT V

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Confinement of an
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An explanation and example of
confinement

SECTION 2

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conditions of secure treatment
certificates

SECTION 3

Secure Treatment
Order

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INTRODUCTION

Secure treatment is one of the most intrusive and extreme interventions that can be made under the Child Welfare Act. It represents a treatment service to remedy problems of children who are emotionally or behaviorally disturbed and present an immediate danger to themselves or others. Any consideration of the need for secure treatment should take into account:

- ° the least restrictive alternative appropriate for meeting the child's needs. Less restrictive placements should, wherever possible, precede restrictive placements.

GIVEN CURRENT CONDITIONS,
IS THE PLANNED TREATMENT THE LEAST RESTRICTIVE?

☐

- ° the magnitude of risk to the child should outweigh the potential harm resulting from the imposition of secure treatment.

IS THE CHILD AND COMMUNITY BETTER OFF WITH SECURE TREATMENT?

☐

- ° the past history of harmful behavior, the degree of this behavior, and the immediate likelihood of the continuation of the behavior.

WILL THE BEHAVIOR GET WORSE IF LEFT IN THE COMMUNITY?

☐

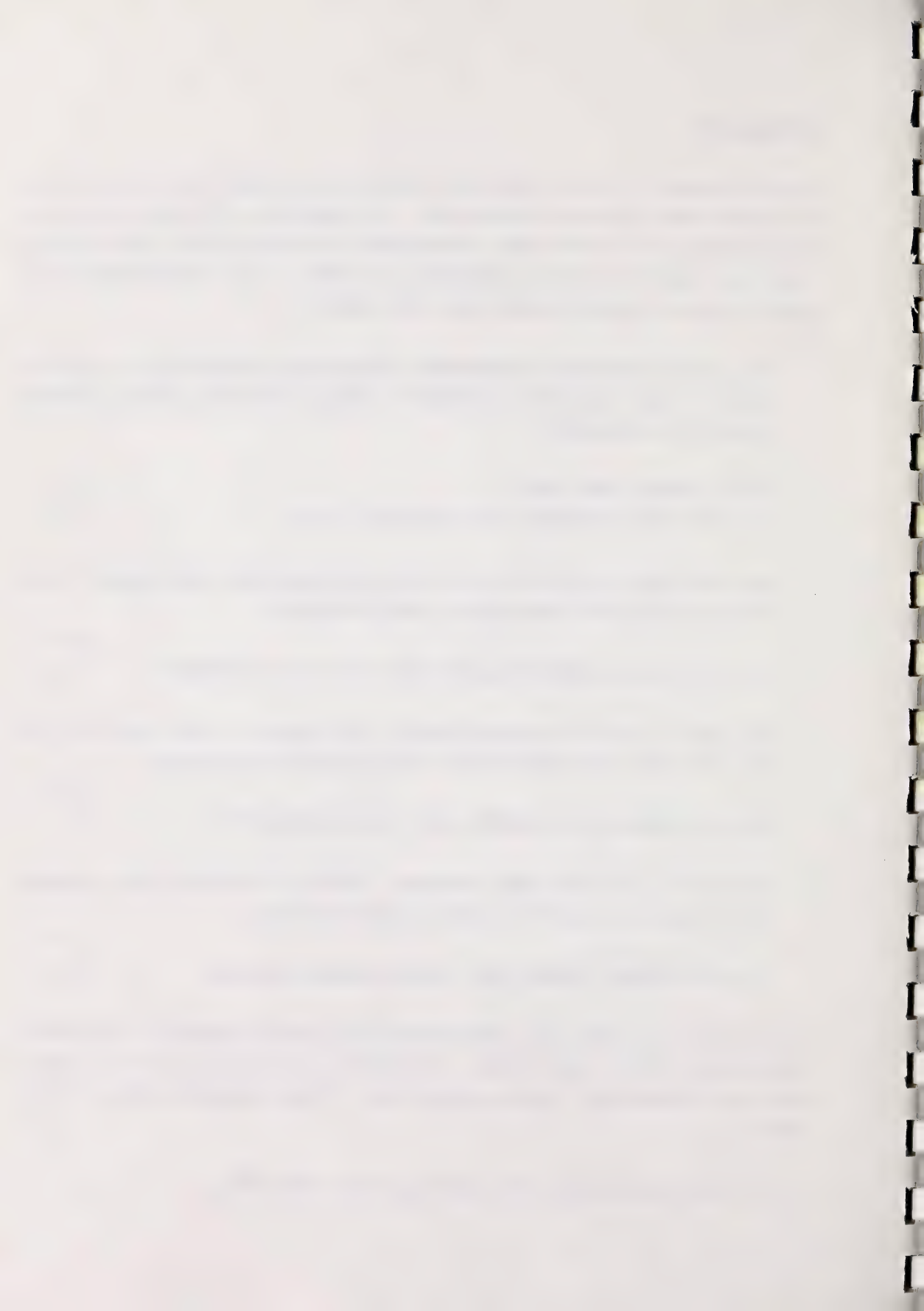
- ° the ability of the secure treatment setting to alleviate the problems that caused the need for secure treatment services.

WILL THE PROBLEM IMPROVE IN A SECURE TREATMENT SETTING?

☐

In order to ensure that this intervention is in the best interest of the child and that the child's legal rights are observed, very clear and strict procedures are incorporated into the legislation. These procedures focus on four areas:

- ° the conditions under which confinement can take place;



- ° the accountability of the Department before the courts;
- ° short timelines for decision making;
- ° a mechanism for review of decisions.

In this section we will examine how these four areas impact your role during the process. We will also describe the types of legal interventions that can be made under the legislation.

SECTION I: CONFINEMENT OF AN APPREHENDED CHILD

Occasionally, it may be necessary to place an apprehended child in confinement. The legislation makes no references to the criteria that must be met in order to confine an apprehended child. Departmental policy, however, states that, in the opinion of the child welfare worker and supervisor, the child must be in a condition presenting a danger to himself or others.

If you apprehend a child for the purpose of confinement you must also bear in mind that a director has the same responsibility for the child's care, maintenance and well being, as for any other child under apprehension.

Section 20(7) allows you, as a child welfare worker, to act when necessary to confine a child; however, it also builds in accountability for these actions. If a child is confined, you are required to appear before the court on behalf of a director within one day of the confinement:

- ° to show why the confinement is necessary, and
- ° if necessary, to apply for an order authorizing the confinement of a child for a further period of no more than eight days.

(C.W.A. Section 20 (7))

The following is an example of the form you must complete for the show cause hearing:

Person I.D. _____

Court Docket No. _____

Court File No. _____

IN THE PROVINCIAL COURT OF ALBERTA
IN THE MATTER OF Tracy Stevens

BORN February 2nd, 1970

A CHILD WITHIN THE MEANING
OF THE CHILD WELFARE ACT

APPLICATION TO SHOW CAUSE FOR CONFINEMENT

I, John Smith, authorized by a director apply:
(name)

1. To show cause that the above named child who was apprehended on 16th day of July, 1986, was confined on 16th day of July, 1986;
2. And I further make application for an order authorizing the further confinement of the child for a period of not more than 8 days.

In support of this application, I solemnly declare that:

1. The child was confined for the following reasons: Behaviorally out of control. AWOL's promiscuity, substance abuse. Threatened suicide within the past twenty four hours and has attempted such in the past.
2. The child requires further confinement for the following reasons: Requires medical and psychological assessment. Because of past AWOL's and seriousness of emotional/behavioral problems she requires constant supervision.

AND I make this solemn declaration conscientiously and believing it to be true and knowing that it is of the same force and effect as if made under oath.

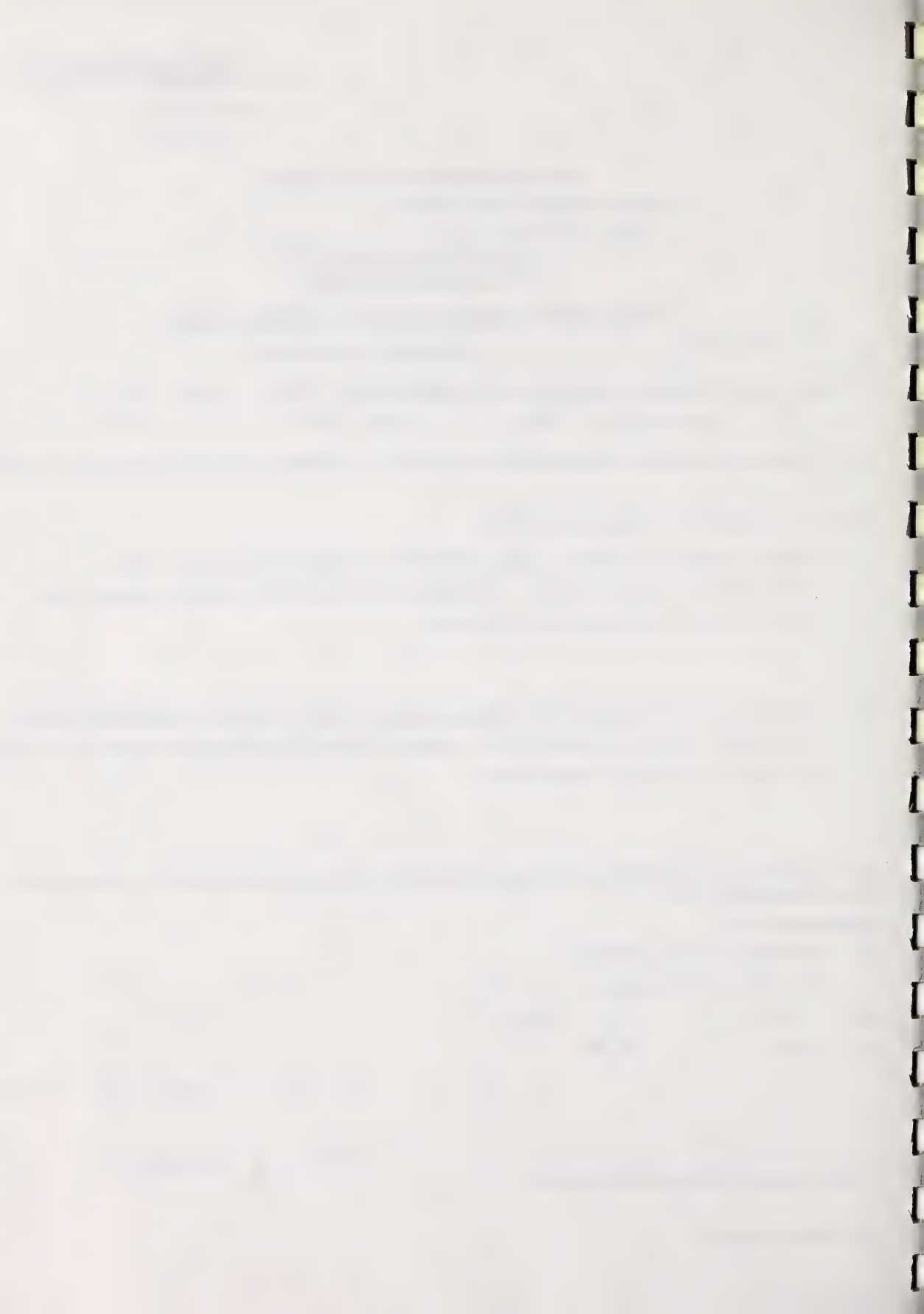
Declared before me)
at Southwest District Office)
105 Street & 80 Avenue)
this 16th day)
of July, 1986)
)
)
)
)
)

(Judge or Justice of the Peace, Notary Public or Commissioner for Oaths)

(Applicant)

(District Office)

To: Clerk of the Court



Under Section 42(1.1) a child welfare worker, on behalf of a director, may also apply for a secure treatment order to extend the confinement of an apprehended child for up to thirty additional days. This thirty day period would then provide an opportunity for further assessment, or for court hearings on issues such as guardianship.

SECTION II: SECURE TREATMENT CERTIFICATE

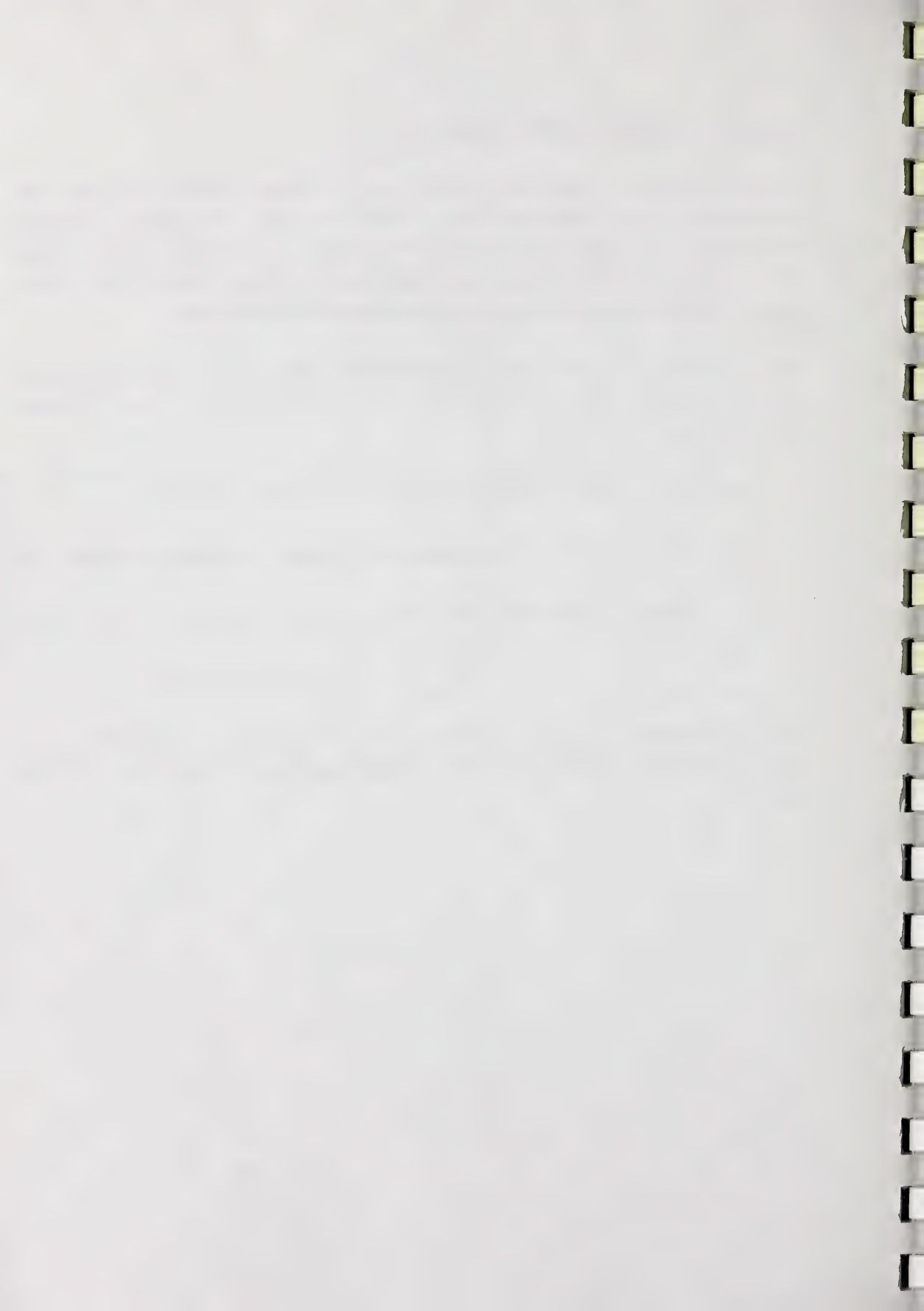
A secure treatment certificate allows for confinement of a child under the guardianship of the Department for up to five days. The secure treatment certificate gives the Department the flexibility to protect children out of control, and to maintain legal accountability for actions taken. This permits time for assessment, diagnosis and recommendations to the Court.

Under Section 41(1) of the Child Welfare Act a child can be confined under a secure treatment certificate or order only if all three of the following conditions are met:

- a. the child is suffering from a mental or behavioral disorder;
- b. the child is in a condition presenting a danger to himself or others; and
- c. it is necessary to confine the child in order to remedy or alleviate the disorder.

(C.W.A. Section 41(1))

The Child Welfare In Progress Handbook provides more specific details on these three conditions, reflecting the current Departmental policies on secure treatment.



A situation in which secure treatment might apply is contained in the following example:

Craig is a sixteen year old boy who is under a permanent guardianship order and in a residential treatment program due to his aggressive behavior. His original admission to care was a result of severe physical abuse. The child welfare worker had indicated in her assessment that Craig's emotional problems have developed as a result of his maltreatment; he has deep rooted feelings of anger towards adults and himself.

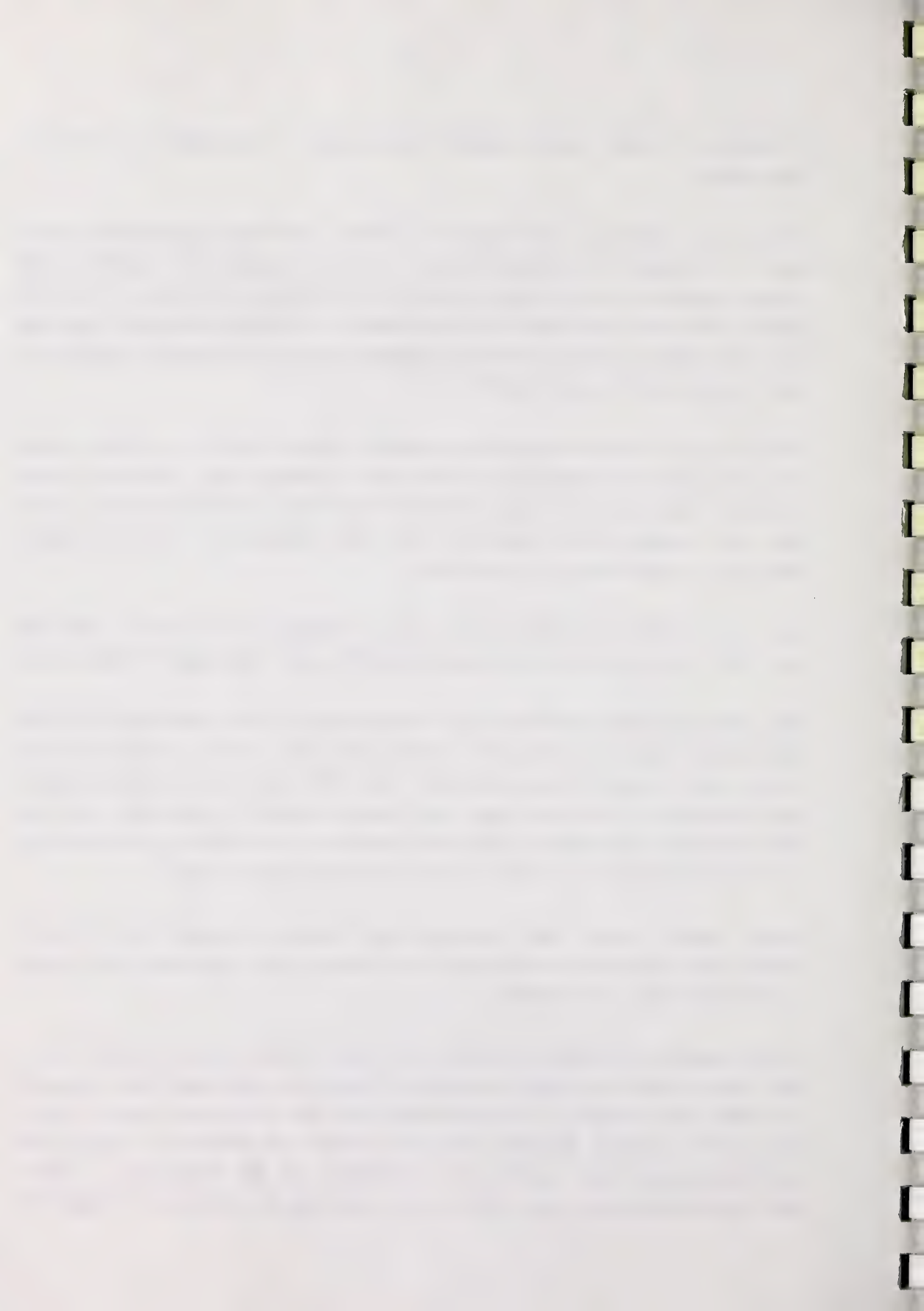
From the age of fourteen Craig has evidenced violent behavior. He once struck one of his physical education teachers with a baseball bat. Similar violent incidents have occurred in the residential treatment setting; however, staff were able subdue Craig before he had the opportunity to hurt anyone. Recently, his aggression has escalated.

One evening Craig threatened another boy in the unit with a knife. The unit staff felt that Craig would have used the knife, and intervened at that point.

When interviewed that evening by his social worker, Craig threatened to finish what he had started. The social worker asked the staff to supervise Craig closely until consultation could take place with the center's psychologist. The psychologist felt that Craig was making progress in treatment, and was therefore more vulnerable to impulsive behaviour and should be confined while he resolved some of the internal conflicts he was experiencing.

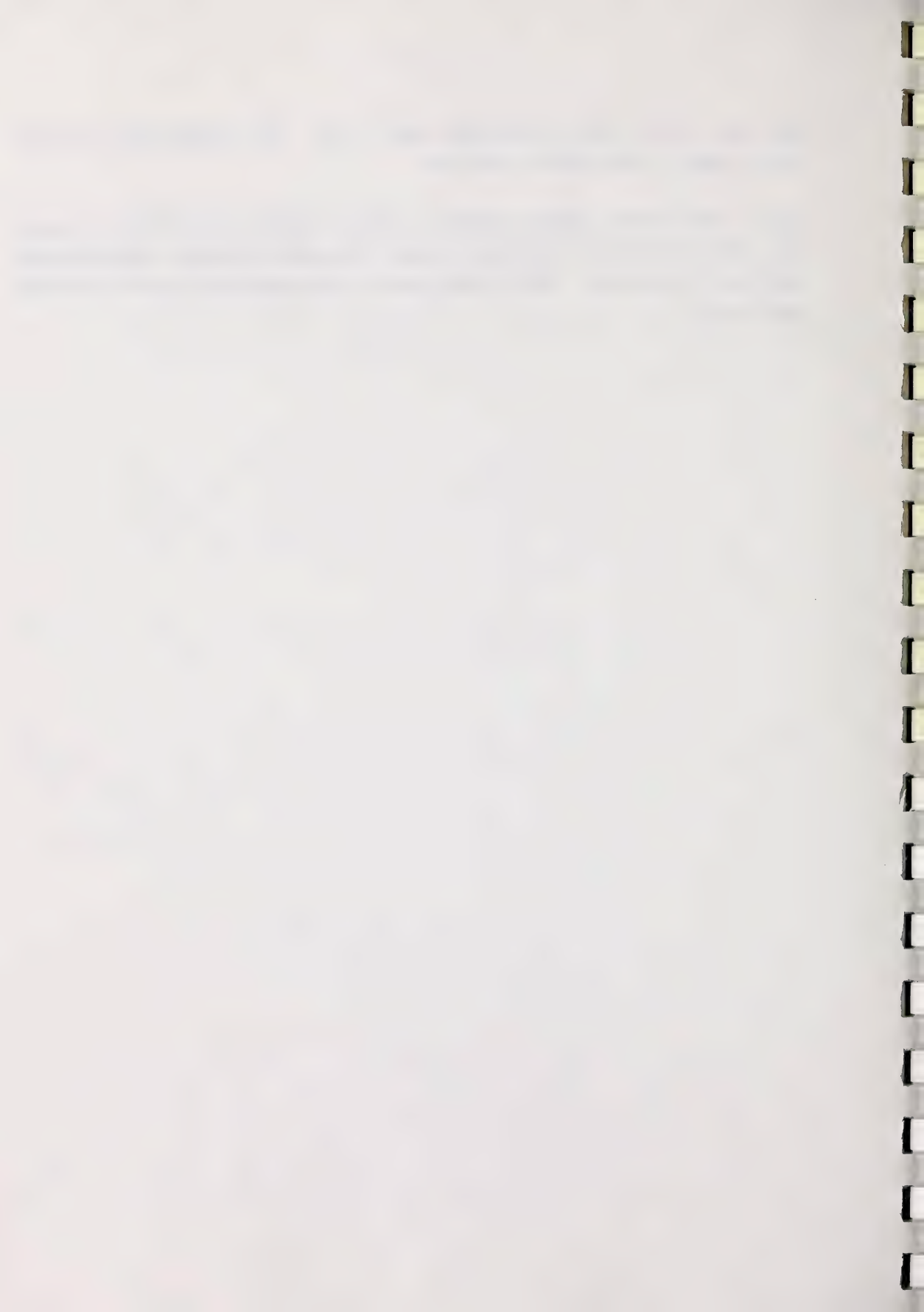
Craig's social worker then contacted the Regional Manager of Children's Services and received permission to place Craig in the confinement unit under a secure treatment certificate.

In this example, Craig was suffering from both a mental and behavioural disorder, was an immediate danger to other children, and confinement was necessary to remedy the disorder. In other situations the child might suffer from a behavioral or mental disorder, present a danger to himself or others, but confinement might only increase the seriousness of the disturbance. Then a more appropriate option might be to avoid confining the child but to supervise



him very closely, (e.g. one-to-one supervision). The decision must be based on the needs of the child in question.

Once a child welfare worker believes a secure treatment certificate is necessary, the certificate is obtained through the regional manager responsible for child welfare matters. The following page is an example of a secure treatment certificate.



Person I.D.
00045678

IN RESPECT of
Name of child

Craig Jones

Date of Birth

y m d
71 03 17

☐ PURSUANT to section 20 of the Child Welfare Act, a director has reasonable and probable grounds to believe that the child is in a condition presenting a danger to himself or others, or

☒ PURSUANT to section 41 of the Child Welfare Act, a director has reasonable and probable grounds to believe that the child:

- a. is suffering from a mental or behavioral disorder; and
- b. is in a condition presenting a danger to himself or others; and
- c. it is necessary to confine the child in order to remedy or alleviate the disorder.

AND IS THEREFORE authorizing the confinement of the child in

Yellowhead Youth Centre
13120 - 34 Street

a Secure Treatment
Institution

y m d y m d
From 86 06 16 To 86 06 20

The reasons for the confinement of the child are as follows: (Summary of presenting problems)

Craig has a past history of AWOL's and assaultive behavior dating back to the age of eleven. He has threatened a boy on the unit with a knife and states that he will follow through with the threat when staff aren't around. Craig's aggressive behavior has increased over the past two months and a secure treatment setting is needed if further counselling with Craig is to continue.

TAKE NOTICE that a director or delegate
will appear in the Provincial Court at

y m d AM/PM
on 86 06 20 at 2:00 ☐ ☒

or so soon thereafter as it may be heard to show cause why this certificate/authorization was issued.

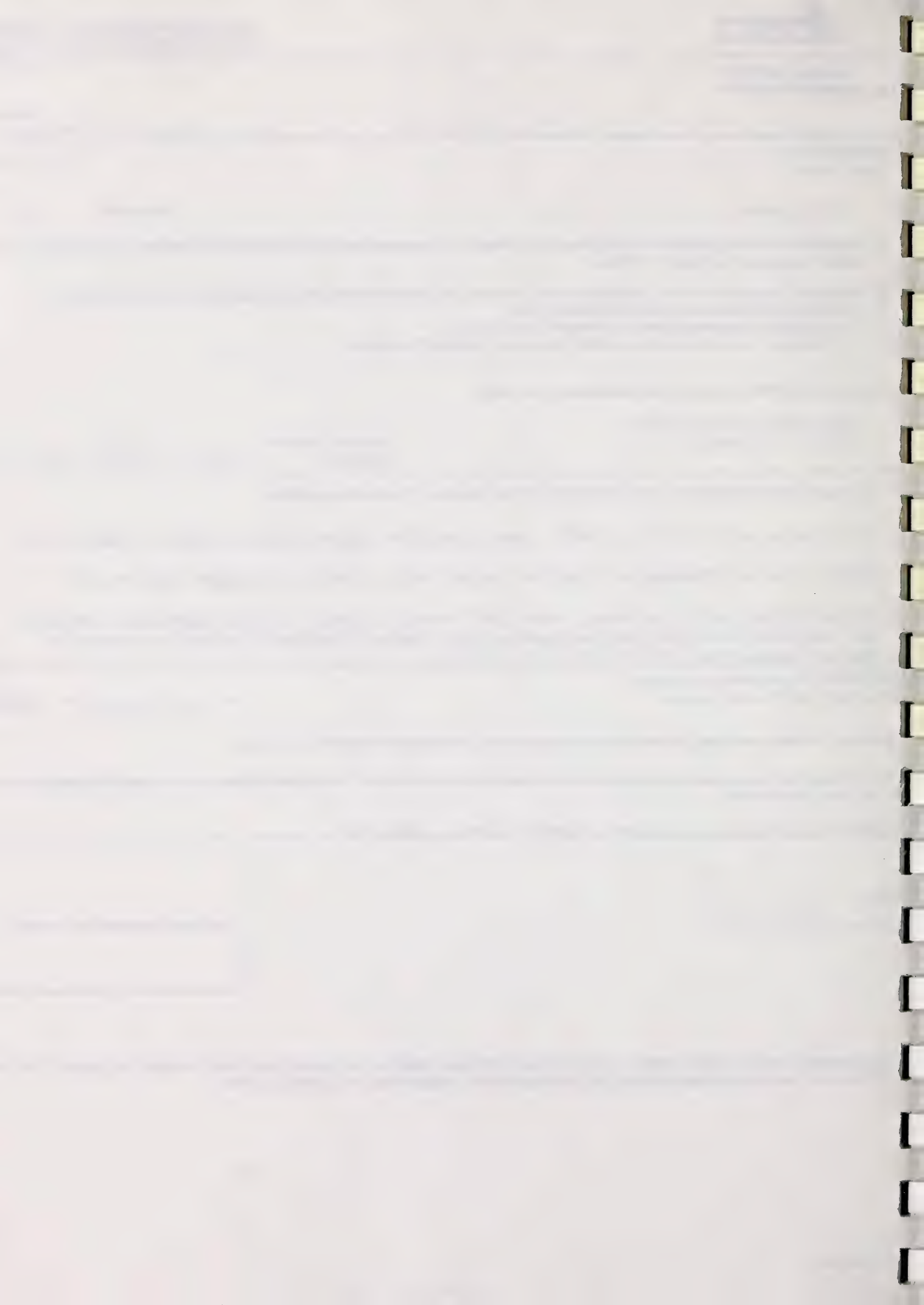
This child is entitled to be represented by a lawyer at any appearance before the Court. The address and telephone number of the nearest office of the Legal Aid Society is:

Melton Building, 103 Street & Jasper Avenue #427-7575

y m d
Dated 86 06 16

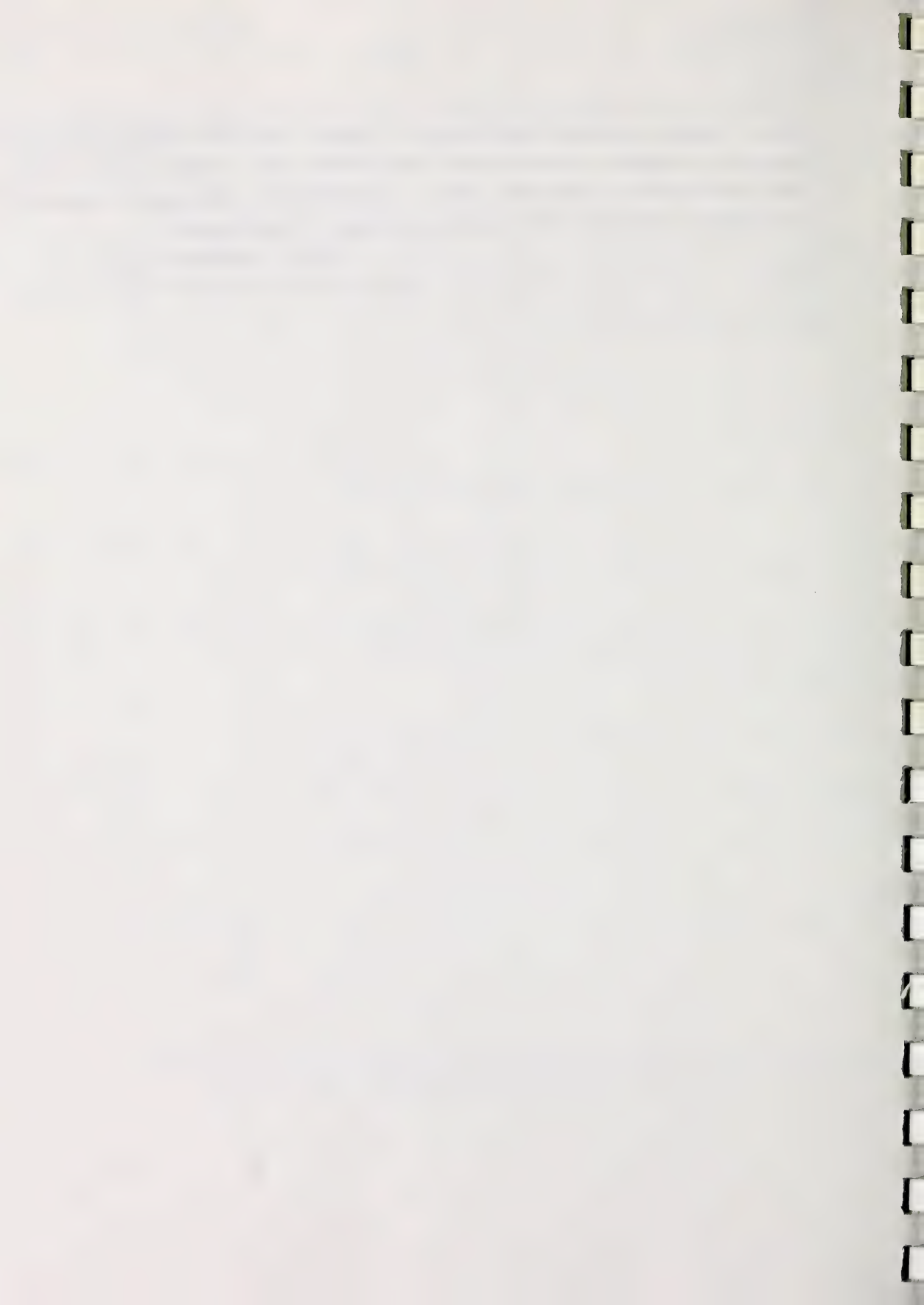
The Director or authorized delegate

THIS CERTIFICATE/AUTHORIZATION IS THE AUTHORITY FOR ANY PERSON TO CONFINEMENT THE CHILD WHO IS THE SUBJECT OF THIS CERTIFICATE/AUTHORIZATION IN A SECURE TREATMENT INSTITUTION FOR THE PERIOD STATED.



When a secure treatment certificate is issued, the child welfare worker is required to appear in court within five working days to show cause as to why the certificate was necessary. Also, a psychological assessment of the child is required within the first seventy-two hours of confinement.

(C.W.A. Section 41 (5))



SECTION III: SECURE TREATMENT ORDER

A secure treatment order is an order given by the Court to confine a child for a specific period of up to a maximum of thirty days. (The order can be renewed for up to sixty days on the first renewal and ninety days on the second renewal.) This provides an opportunity for long-term treatment.

If a child is the subject of a temporary or permanent guardianship order, a director may apply to the Court for a secure treatment order.

A director shall serve a guardian of the child and the child (if 12 years of age or over) with notice of the time and place of the hearing of an application not less than two days before the date of the hearing.

The conditions for a secure treatment order are the same as those for a certificate giving all of the following:

1. The child is suffering from a mental or behavioral disorder.
2. The child is presenting danger to himself or others.
3. It is necessary to confine the child in order to remedy or alleviate the disorder.

(C.W.A. Section 42 (1) (2) & (3))

A secure treatment order is sufficient authority for any person to confine the child in a secure treatment institution for the period stated in the order or the period of the guardianship order, whichever is shorter.

A director shall specify the secure treatment institution in which a child shall be confined pursuant to a secure treatment order.

(C.W.A. Section 42 (4) & (5))

In making a secure treatment order, the Court shall:

1. inform the child of the reason for doing so

2. provide the child, his guardian and his lawyer with a copy of the order and a written statement showing:
 - a. the reason for confinement;
 - b. the period of the confinement and the date on which it terminates;
 - c. that the order may be reviewed or appealed on the application of the child, or his guardian or a director;
 - d. that the child may obtain a copy of the form prescribed for making an application for a review from the person in charge of the secure treatment institution;
 - e. that the child may be represented by a lawyer at any application to the Court;
 - f. address and telephone number of the nearest office of Legal Aid Society.

(C.W.A. Section 42 (b))

Reviews

A request for a review of a confinement order can be made by a child for whom a secure treatment order has been made, a guardian of the child, or a director.

An application for a review may be made:

1. once during the period of the order,
2. once during the period of renewal of the order.

The hearing of a review shall be held not more than ten days after the application is filed with the Court or within any further period the Court directs.

(C.W.A. Section 42 (7))

Notification of a Review

The clerk of the Court shall notify a director of the application.

After hearing an application for the review of a secure treatment order, the Court may make an order in accordance with the conditions of a secure treatment order confirming, varying or terminating the secure treatment order.

The director shall send a notice of the date, time and place of the of the review hearing by the Court by registered mail or by any other method approved by the Court to:

- a. the child
- b. a guardian of the child
- c. a person in charge of the secure treatment institution in which the child is confined.

not less than 5 days before th date fixed for the hearing.

(C.W.A. Section 47 (4) & (5))

Leave of Absence

During the term of a secure treatment certificate or order a director may grant the child a leave of absence from the secure treatment institution for medical, humanitarian or rehabilitative reasons on any terms and conditions that the director considers necessary.

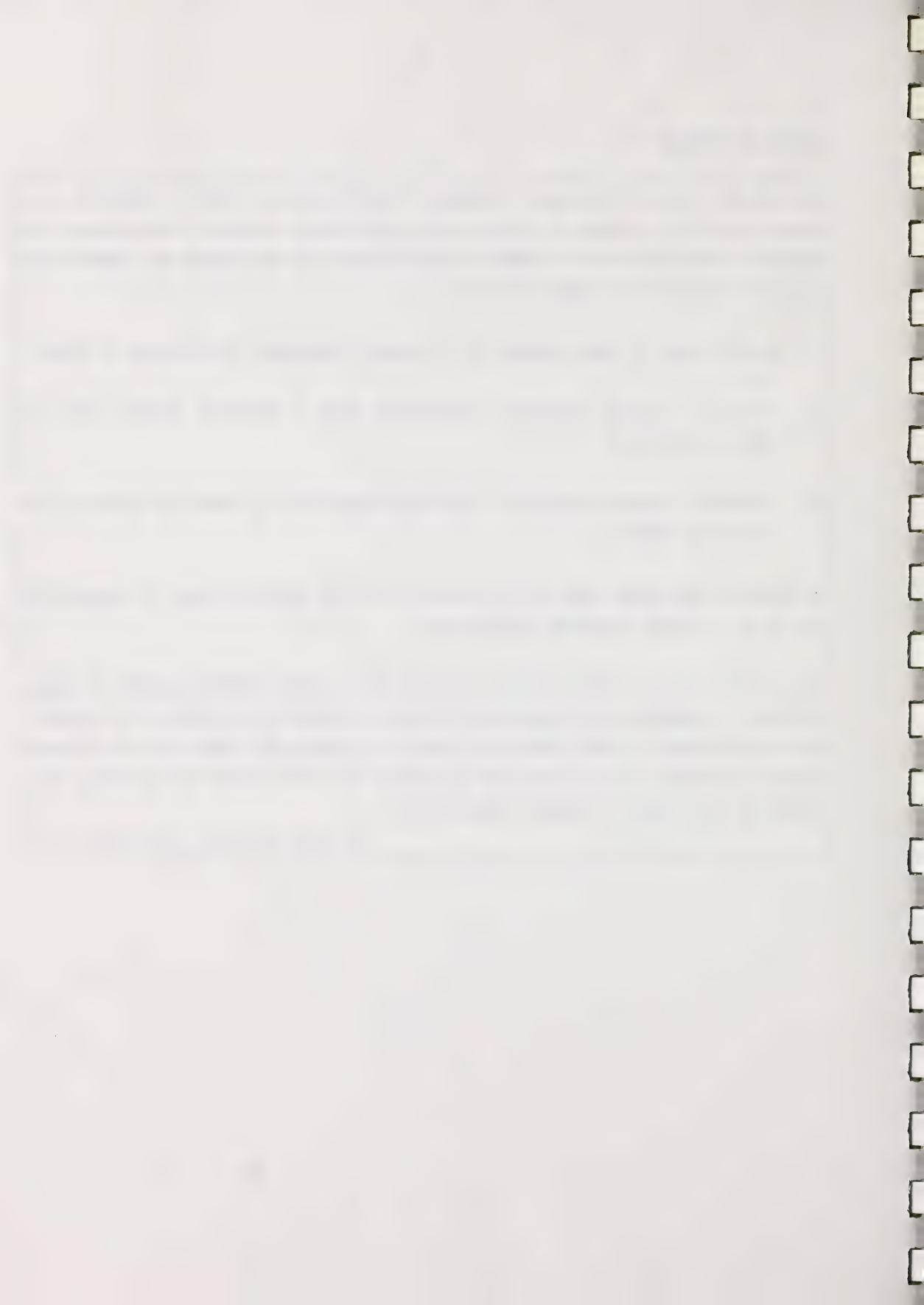
If a child who is the subject of a secure treatment certificate or order:

- a. leaves a secure treatment institution when a leave of absence has not been granted, or
- b. leaves a secure treatment institution pursuant to leave of absence but fails to return,

a director may order any child welfare worker or peace officer to return the child to a secure treatment institution.

Upon receipt of an order from a director every child welfare worker or peace officer is empowered to apprehend, without an order of a court or a warrant, the child named in the director's order, to convey the child to the nearest secure treatment institution and to detain the child while he is being conveyed to the secure treatment institution.

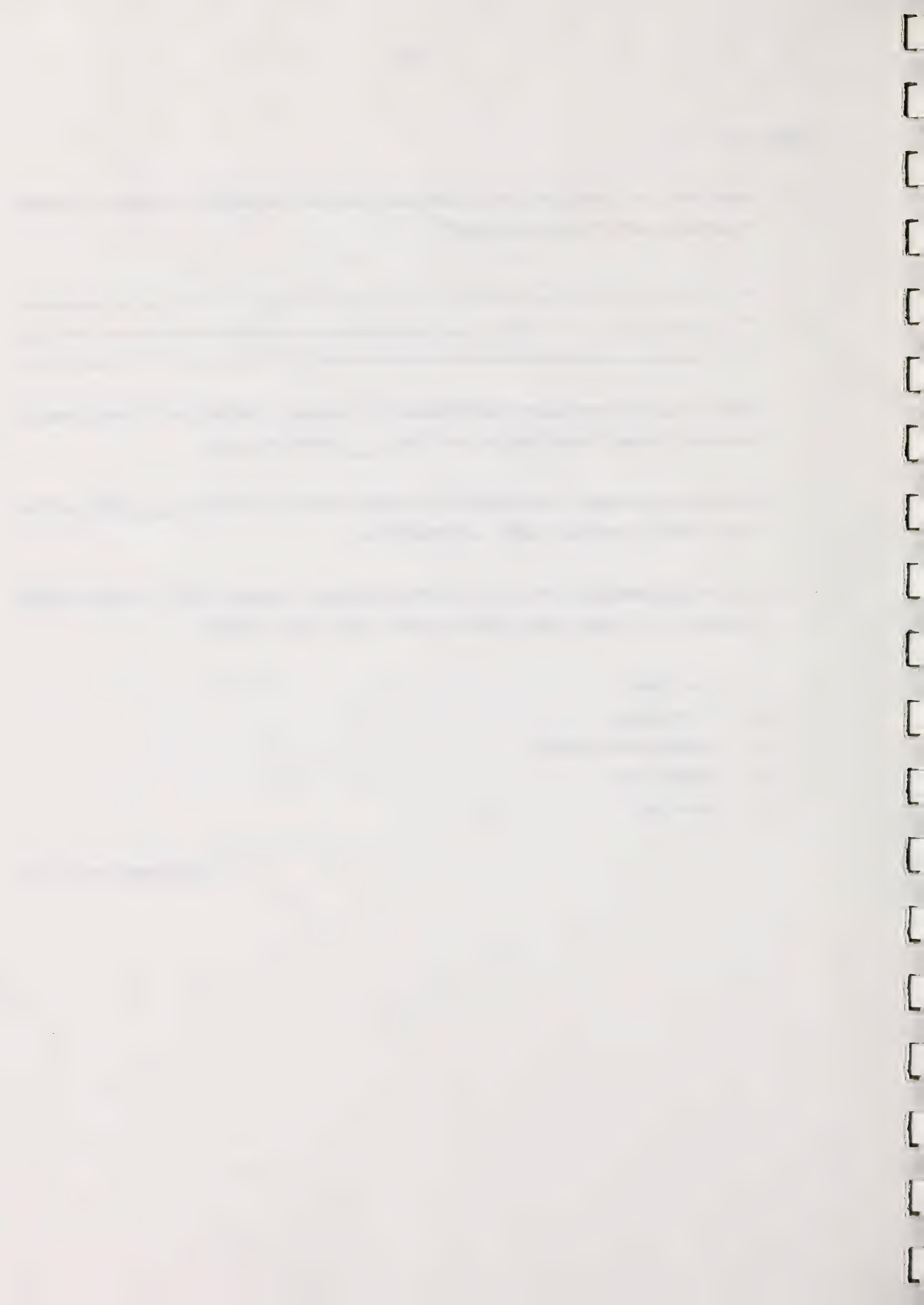
(C.W.A. Section 45(1),(2) & (3))



Exercise

1. What are the three criteria that must be met in order to obtain a secure treatment certificate or order?
 - a. _____
 - b. _____
 - c. _____
2. Once a secure treatment certificate is issued, a director is required to arrange a show cause hearing within _____ working days.
3. A secure treatment order may be granted for for up to a _____ day period for a child confined under apprehension. .
4. If an apprehended child is confined under Section 20(7) of the Child Welfare Act a show cause hearing must take place within:
 - a. two days
 - b. five days
 - c. seventy-two hours
 - d. eight days
 - e. one day

..... continued next page



5. Please indicate whether each of the following statements are true or false:

	<u>True</u>	<u>False</u>
a. The criteria for confining an apprehended child under Section 20(7) is the same as the criteria for secure treatment certificates.	_____	_____
b. The confinement of an apprehended child can be extended through a judge's order at the show cause hearing for an additional eight days.	_____	_____
c. The first renewal of a secure treatment order can only be for a period of up to sixty days.	_____	_____
d. A secure treatment certificate can only be issued for children under the guardianship of the Department.	_____	_____
e. A secure treatment certificate requires a judge's approval before it can be implemented.	_____	_____

Answers

1. a. The child is suffering from a mental or behavioral disorder,
 b. the child is in a condition presenting danger to himself or others,
 and
 c. It is necessary to confine the child in order to remedy or alleviate
 the disorder.
2. 5
3. 30
4. e
5. a. False (there are no criteria)
 b. True
 c. True
 d. True
 e. False (it requires approval from the regional manager responsible
 for child welfare)



SECTION IV: APPEAL PROCESS

The Child Welfare Appeal Panel, under Section 84 of the Act, has the authority to review specific Departmental decisions when a child, or person who has been caring for the child, feels that the decisions are inappropriate.

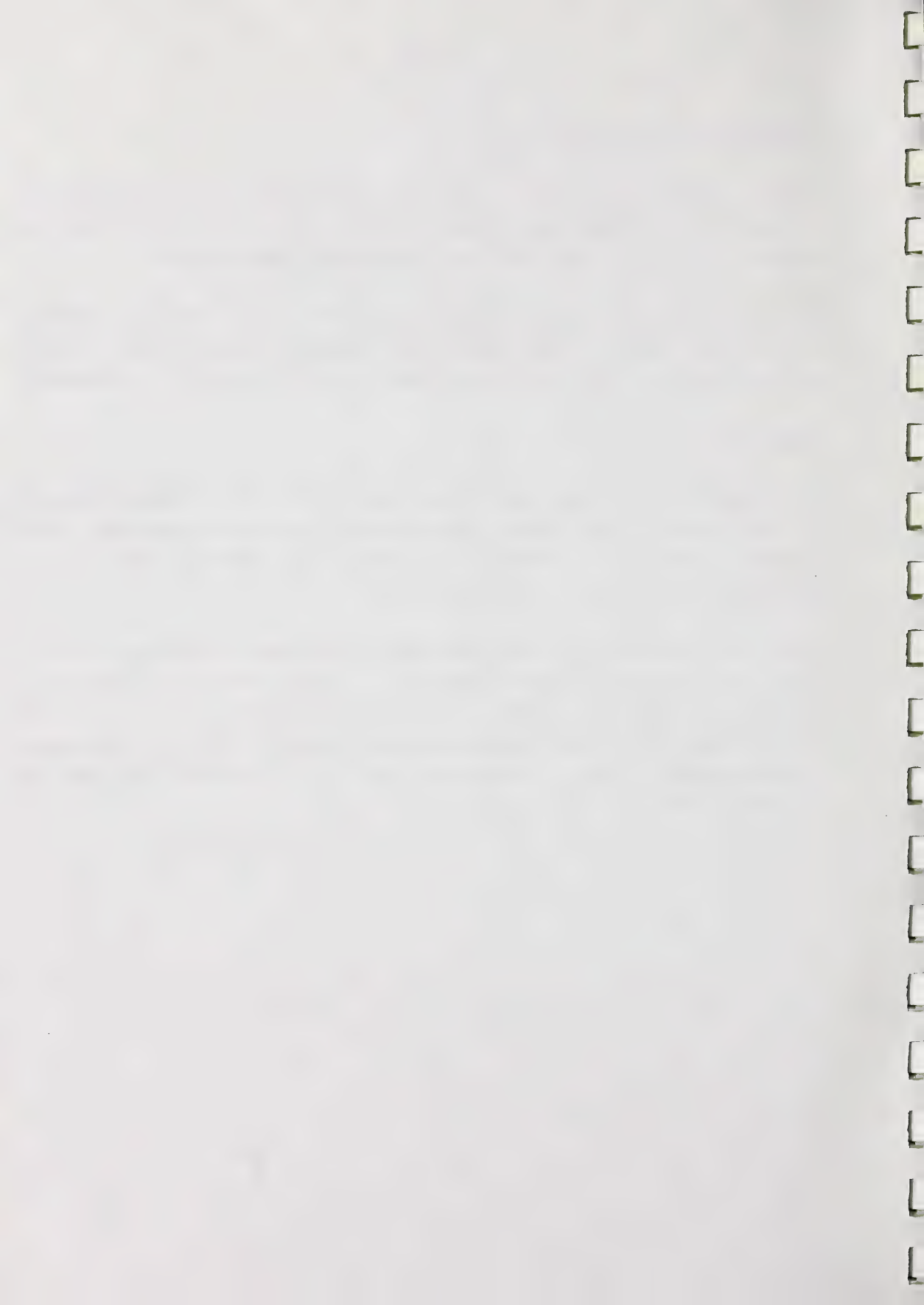
By allowing certain decisions to be reviewed by a panel comprised of people not directly involved in the decision, the legislation ensures that the rights of individuals who are receiving services from the Department are protected.

Membership

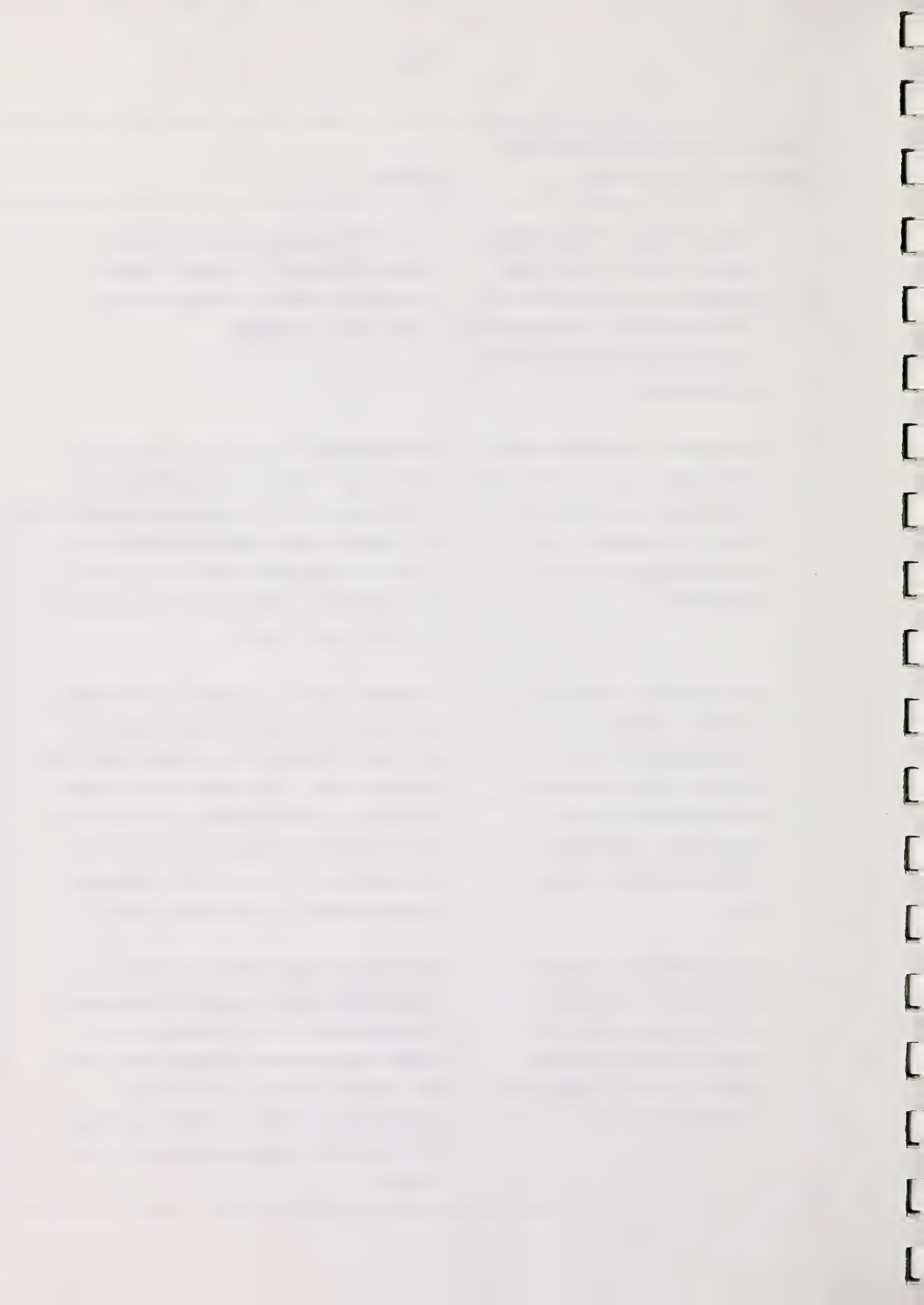
The Appeal Panel is comprised of seven members who are not directly employed by the Department. All members are appointed by the Minister and come from a number of geographically diverse regions within the province. Their term of appointment can be up to a three year period.

From the seven members on the panel, one is appointed chairperson, a second vice chairperson and a third secretary. A quorum consists of three, thus allowing for the panel to meet in two separate sections. For example, one section chaired by the chairperson could meet in Medicine Hat while the second section chaired by the vice chairperson could hold a hearing on the same day in Grande Prairie.

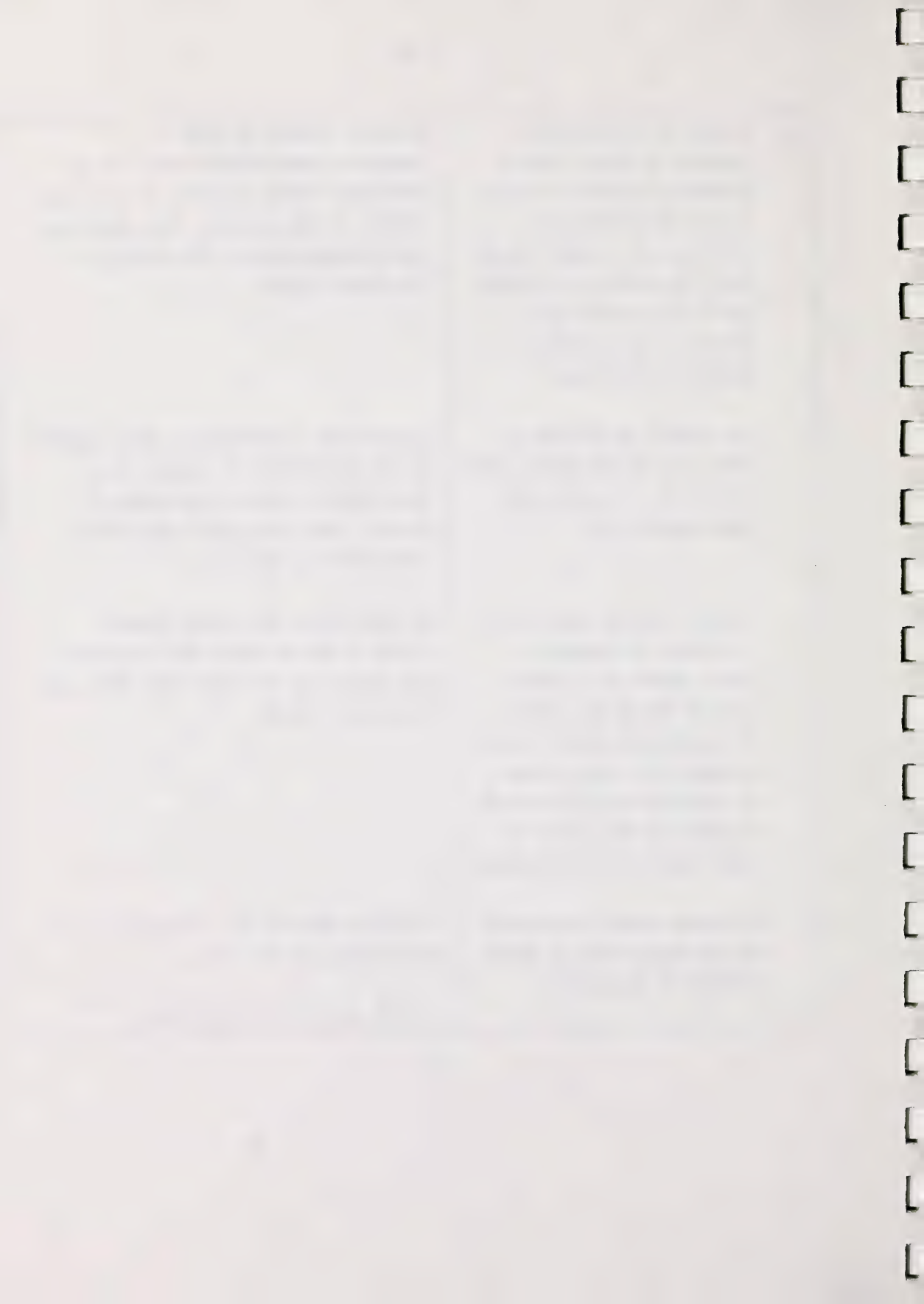
(C.W.A. Section 84)



APPEALS MAY BE MADE REGARDING A DIRECTOR'S DECISION ON:	EXAMPLE
1 Removal from a foster home, adoptive home or any other placement of a child who is the subject of a temporary or permanent guardianship order or agreement.	A child is removed from a foster home and placed in another foster placement closer to his/her home. This can be appealed.
2. Visitation permission for any person who has a significant relationship with a child who is the subject of a permanent guardianship agreement.	The guardian of a child staying at a child care center is not allowed to see his/her child because the center feels the interaction between guardian and child is detrimental to the welfare of the child. This could be appealed to the Appeal Panel.
3. Disclosure or refusal to disclose information in the possession of the Minister that relates to the appellant, except information regarding adoptions (see Section 66).	A mother wishes to appeal a permanent guardianship order because she feels she has resolved the problems that led to the order. The Department refuses to give her background information for the period of permanent guardianship on the child. This could be appealed by the mother to the Appeal Panel.
4. The provision or refusal to provide any support services to a child 16 years of age or over by entering into a support or custody agreement.	A seventeen year old was living in a foster home under a custody agreement. The Department is not willing to renew the agreement because they feel the youth is capable of living without the support of the Department. This decision can be appealed by the youth.



5. Refusal or failure of a director to enter into an agreement regarding a child in need of protective services, or to apply to the Court in respect of a child who in the opinion of a director, is in need of protective services.	A worker refuses to seek a temporary guardianship order for an adolescent whose behavior is out of the control of the parents. This decision could be appealed by the parents to the Appeal Panel.
6. The refusal or failure to enter into an agreement under Section 72 in respect of a handicapped child.	A parent of a handicapped child applies to the Department for access to a Departmental program and access is denied. They may appeal under this sub-section of the Act.
7. A person who has applied to a director to become a foster parent or to have a child who is the subject of a permanent guardianship agreement or order placed in his home for the purposes of adopting that child and whose application is refused.	An application for foster parent status is turned down. The applicants may appeal the decision under this sub-section of the Act.
8. Any other matter prescribed in the regulations as being subject to an appeal.	(No other matters are prescribed in the regulations at this time.) (C.W.A. Section 86 (2) & (4))



In all of the above situations the application for appeal of a decision must be submitted to a director (or his/her designate) not more than thirty days after the date on which the appellant receives notice of the decision. Decisions of the Children's Guardian or a Minister cannot be appealed to the Appeal Panel.

People Who Can Initiate an Appeal

The following people can launch an appeal:

- ° a guardian of the child
- ° a child
- ° a foster parent or any other person who is affected by the decision and has had continuous care of the child for six months or more.

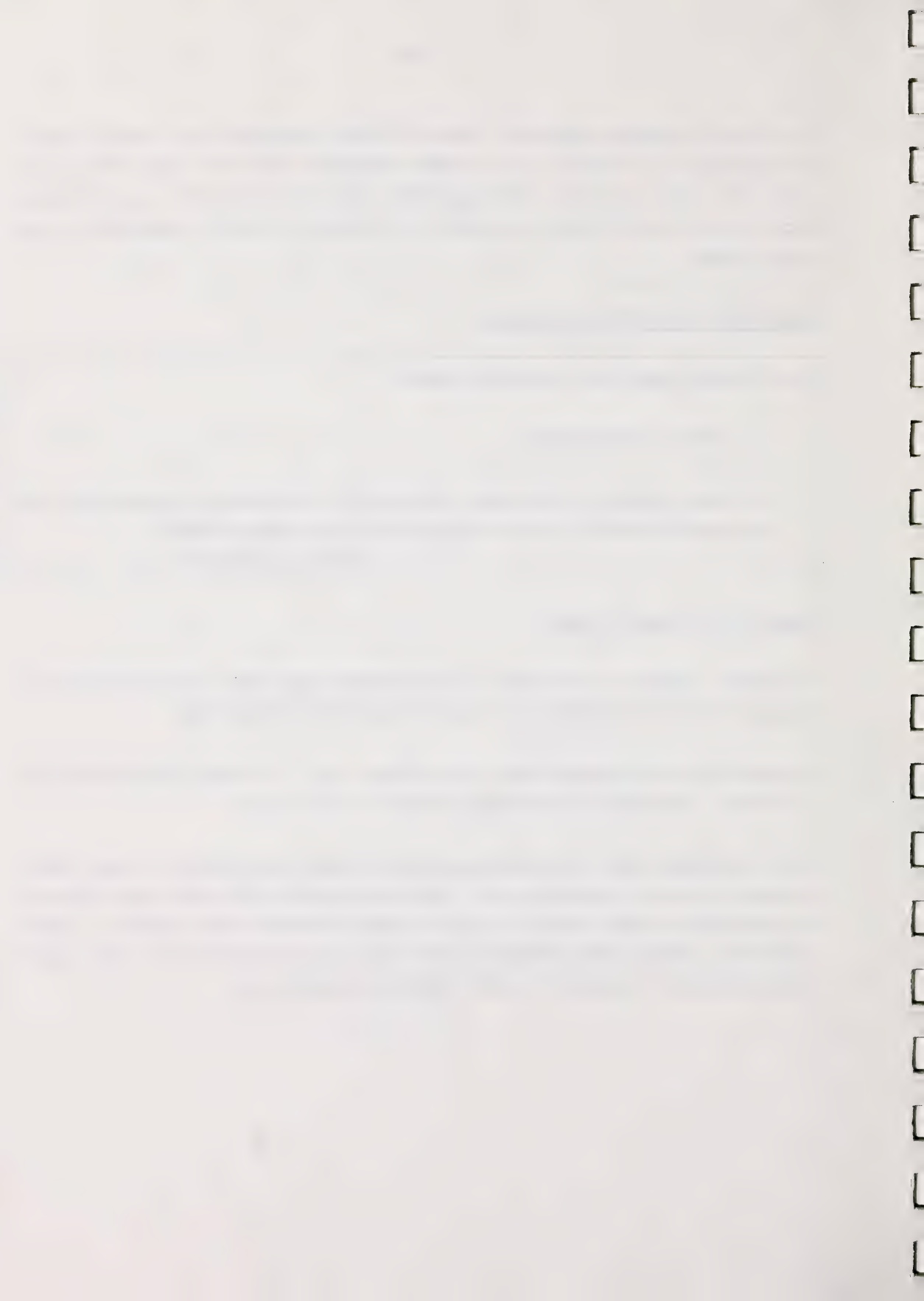
(C.W.A. Section 81 (1))

Powers of the Appeal Panel

The Appeal Panel is not bound by Departmental policy. Its decisions do, however, have to lie within the intent of the Child Welfare Act.

The decision of the Appeal Panel can confirm, vary, or reverse the decision of a director. Decisions of the Appeal Panel are also final.

Since the Appeal Panel has been formulated through legislation, it comes under the Administrative Procedures Act. The Administrative Procedures Act outlines the conditions with which a formal appeal process must comply. These conditions include such things as the right of all parties to have legal representation, to appear in person before the panel, etc.



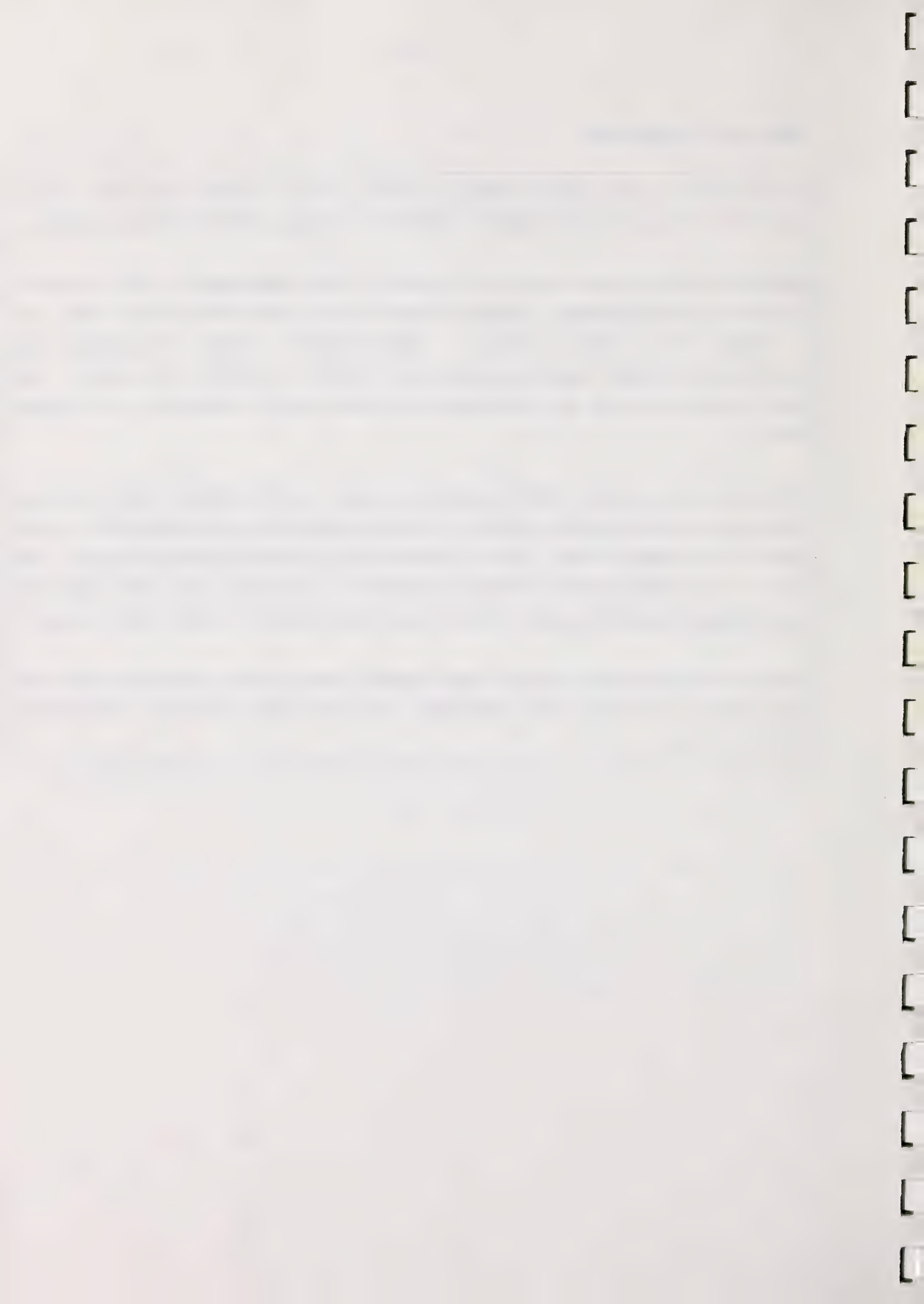
Administrative Reviews

In addition to the Appeal Panel, Alberta Social Services provides for an internal review of child welfare decisions through Administrative Reviews.

Administrative Reviews consist of a panel of three Departmental staff (usually a District Office Manager, Casework Supervisor not involved with the case, and a manager from another office). Administrative Reviews investigate the decision and either confirm, change or reverse an initial decision. Any decision made through an Administrative Review can be referred to the Appeal Panel.

Any person who has the right to make an appeal to the Appeal Panel can also initiate an Administrative Review. Only decisions that by legislation can be heard by an Appeal Panel, can be referred for an Administrative Review. The use of this Administrative Review mechanism is optional since the appellant may proceed directly to the Child Welfare Appeal Panel with his or her appeal.

Administrative Reviews must be heard within three working days from the date the request for review was submitted. Decisions must also be communicated within one day.



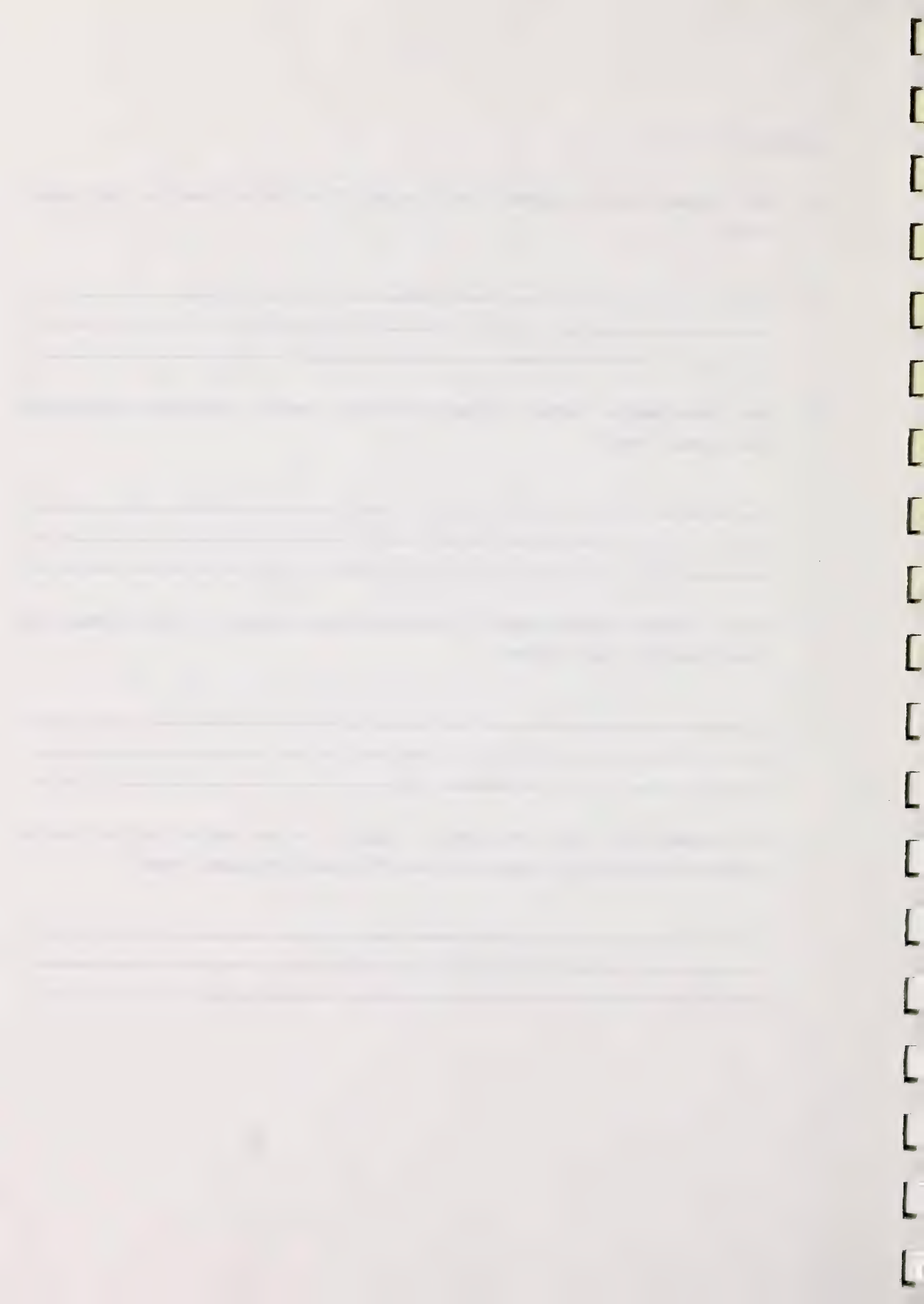
Exercise

1. Can foster parents appeal the closing of a foster home to the Appeal Panel?

2. Are Departmental workers accompanied by a lawyer when appearing before the Appeal Panel?

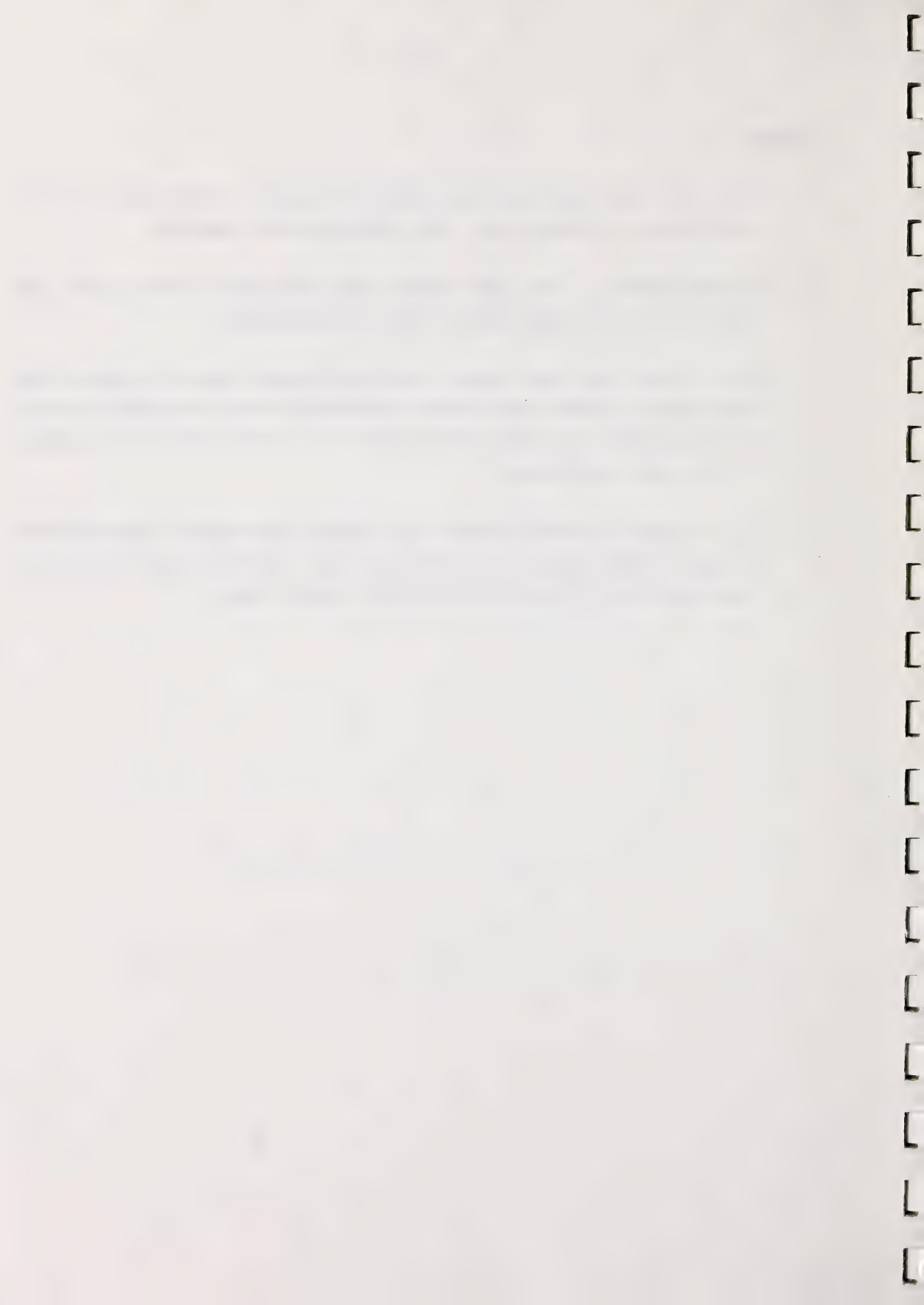
3. Can a foster parent appeal a decision by a worker to let a temporary guardianship order expire?

4. Are appellants first required to apply for an Administrative Review before considering an appeal to the Child Welfare Appeal Panel?



Answers

1. NO. This decision cannot be appealed; however, if the foster parent reapplies and is turned down, this decision can be appealed.
2. NOT NECESSARILY. This will depend upon the nature of the appeal and whether or not the appellant has legal representation.
3. NO. If after the order expires the foster parents have information that leads them to believe that another guardianship order is necessary, this may be appealed, once the foster parent is notified that the Department will not seek guardianship.
4. NO. The Administrative Review is an internal Departmental mechanism that is open to the appellant, but they are not required to use it prior to launching an appeal to the Child Welfare Appeal Panel.



Commonly Asked Questions

1. Can client files be reviewed by the appellant and do they have access to confidential reports?

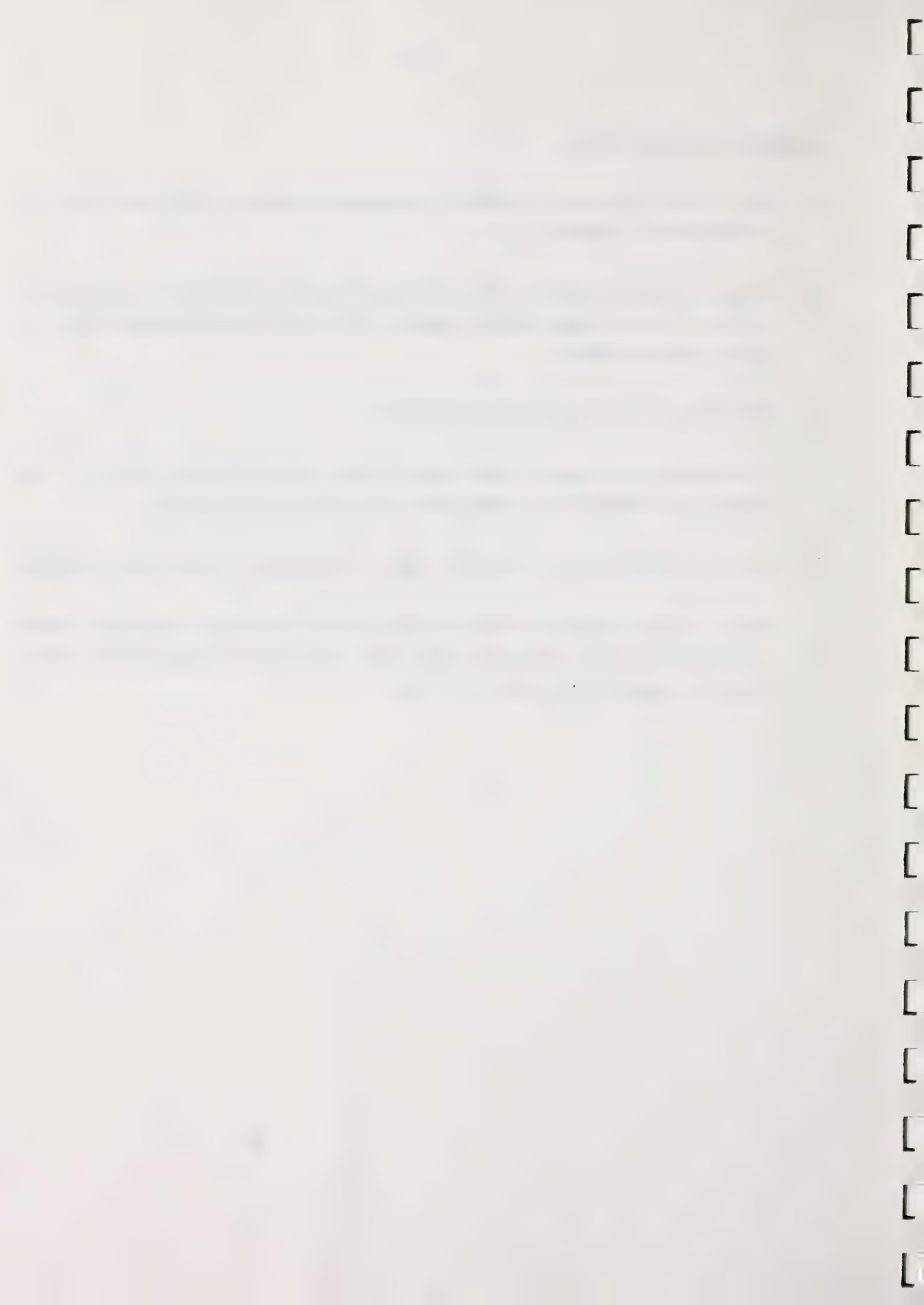
YES. If the decision of the worker was based on information contained in client files and confidential reports, the client would have the right to access these reports.

2. How formal is an Appeal Panel hearing?

The process is usually less formal than a normal court hearing. The degree of formality may depend upon the nature of the appeal.

3. Can the decision of an Appeal Panel be appealed to the Court system?

YES. If the appellant felt that any of the procedures stipulated under the Administrative Procedures Act were not followed appropriately, this could be appealed to a court of law.



References

1. Alberta Social Services
Handbook - Child Welfare in Progress
Tab 03 - pages 63-79
Tab 03 pages 103-111
2. Alberta Social Services
Program Manual - Child Welfare in Progress
pages: PM 78-88
PM 59
3. Alberta Social Services - Native Child Welfare Services Practice
Guidelines
Child Welfare In Progress
4. Alberta Child Welfare Act
5. American Humane Association
"Helping in Child Protective Services: A Casework Handbook"

